fore the caveatee: see the definition of "caveatee" in section 4 of the Land Titles Act (Cap. 276). They can summon as they have done, Tan, the caveator, to attend court to show cause why the caveat should not be withdrawn or otherwise removed: see section 107 of the said Act.

So far as the Developers are concerned, the conclusive point is that there is no purchaser by the name of Roland Koh or Tan Hiap Hui registered with them. They are not privy to the transaction between Tan and Roland Koh. They have, however, an Agreement for Sale and Purchase with Liew. In these circumstances, I found that Tan had not shown cause for the caveat to remain in force against the Developers.

I also held that Liew was entitled to have the caveat of Tan lodged against the premises removed because Liew was, by the Deed of Assignment, already the owner of the premises when Tan lodged his caveat. As in the case of the Developers, Liew too was not privy to the transaction between Tan and Roland Koh.

Finally, on the argument on *locus standi* raised on behalf of Tan against Liew, the short answer is, as Liew had filed a caveat (No. CV/45461), he was entitled to commence the proceedings in Originating Summons No. 121 of 1982 to have the conflict between his caveat and that of Tan resolved by this court.

For these reasons, as I have said, I made orders in terms in both the Originating Summonses.

Order accordingly.

Solicitors: *Wee Swee Teow & Co.; Tang & Tan; Lee & Lee.*

MALAYSIAN REPORTS

DR. PARAMSOTHY S/O MURUGASU v. UNIVERSITY OF MALAYA

[F.C. (Raja Azlan Shah L.P., Abdul Razak & Abdoolcader JJ.) November 5 & December 21, 1982]

[Kuala Lumpur – Federal Court Civil Appeal No. 165 of 1982]

Contract – Contract of employment – Appointment with University of Malaya – Appointment "subject to such terms and conditions as may be prescribed" – Prescribed examinations – Service Circular requiring officers on probation to pass Peperiksaan Am Kerajaan – Whether valid – Constitution of University of Malaya, ss. 4, 16, 25, 45.

University of Malaya – Contract of Employment – Appointment of lecturer – Appointment "subject to such terms and conditions as may be prescribed" – Prescribed examinations – Service Circular requiring officers on probation to pass Peperiksaan Am Kerajaan – Whether valid – Constitution of University of Malaya, ss. 4, 16, 25 and 45.

Employment – Contract of employment – "Subject to such terms and conditions as may be prescribed" – Service Circular requiring officers on probation to pass Peperiksaan Am Kerajaan – Validity of.

In this case the appellant was appointed a lecturer in the Faculty of Medicine, University of Malaya and the letter of offer expressly sets out a number of conditions including the following:

"(ii) subject to satisfactory service, passing the prescribed examinations and fulfilling other relevant conditions you shall be eligible to be considered for confirmation in your appointment at the end of this period.

(ix) You shall at all times, be subjected to the Constitution of the University of Malaya, Statutes, Acts and Regulations in force in the University of Malaya. Amendments and Adaptations to these regulations and practices may, from time to time, be made by the Council of the University of Malaya."

The University Council in a policy decision passed a resolution requiring all officers in Groups A and B who are still on probation to pass the Peperiksaan Am Kerajaan in addition to any other examination as a prerequisite for confirmation in the posts. The resolution was embodied in a Service Circular.

The appellant filed a writ seeking a declaration and an injunction to restrain the University from implementing the Service Circular on the ground that it is invalid and conflicts with the terms and conditions of his contract of employment and is also in violation of section 45(3)(b) of the Constitution of the University. The learned judge of the High Court held that the Service Circular was valid and not *ultra vires* the Constitution of the University. The appellant appealed.

Held: (1) the appointment of the appellant was under section 45(3)(b) of the Constitution of the University subject to "such terms and conditions as may be prescribed by the Council";

(2) although no statute, Act or regulation has been made by the Council pursuant to section 4(1)(a) of the Constitution of the University defining or regulating "prescribed examinations" for the purposes of the conditions of service, the provision providing for "such terms and conditions as may be prescribed by the Council" should be given a broad as opposed to a narrow construction and one which will serve to achieve the broad objects and purposes Parliament intended;

(3) the Service Circular in this case was one which was made in the exercise of the powers conferred by the Constitution of the University even if the occasion for its exercise arose as a result of contractual arrangement. The Service Circular was therefore valid and did not amount to a unilateral variation of the appellant's contract of employment;

(4) there was no reason in principle why the Council could not implement its resolution by way of a Service Circular instead of by Statute, Act or Regulation.

Cases referred to:

(1) *Cowey* v. *Liberian Operations Limited* [1966] 2 Lloyd's Rep. 45.
(2) *John Lee & Son (Grantham) Ltd.* v. *Railway Executive* [1949] 2 All E.R. 581, 583.
(3) *Kong Ming Bank Bhd.* v. *Leong Ho Yuen* [1982] 2 M.L.J. 111.

[The following cases were also cited in argument: *Rajion Haji Sulaiman* v. *Government of Kelantan* [1976] 1 M.L.J. 118, 119; *National Coal Board* v. *Galley* [1958] 1 W.L.R. 16, 24; *F. & G. Sykes (Wessex) Ltd.* v. *Fine Fare Ltd.* [1967] 1 Lloyd's Rep. 53, 57; *Whitworth Estates Ltd.* v. *Miller* [1970] A.C. 583, 603 D-E; *Wickman Tools* v. *Schuler* [1974] A.C. 235, 252; *Lam Kee Ying Sdn. Bhd.* v. *Lam Shes Tong & Anor.* [1974] 2 M.L.J. 83, 86; *De Bussche* v. *Alt* (1878) 8 Ch. D. 286, 314; *Woodhouse A.C. Israel Cocoa Ltd. S.A. & Anor.* v. *Nigerian Produce Marketing Co. Ltd.* [1972] A.C. 741; *Unsworth* v. *Elder Dempster Lines Ltd.* [1940] 1 All E.R. 362, 368; *In re Weston* [1907] 1 Ch. 244; *Eastern Mining & Metals Co. Sdn. Bhd.* v. *M.M. Ismail & Ors.* [1976] 1 M.L.J. 166]

FEDERAL COURT.

C. Abraham (*S. Radha Krishnan* with him) for the appellant.

C.V. Das for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah L.P. (delivering the Judgment of the Court): The appellant was appointed a lecturer in the Radiology Department in the Faculty of Medicine, University of Malaya ('the University') on August 22, 1978 in pursuance of a letter of offer dated May 18, 1978. The letter of offer expressly sets out a number of conditions. The first condition was that the appointment offered was permanent and pensionable subject to a probationary period of 3 years. Two other conditions are very material for the purpose of this appeal and we reproduce them below:

"(ii) subject to satisfactory service, passing the prescribed examinations and fulfilling other relevant conditions you shall be eligible to be considered for confirmation in your appointment at the end of this period.

(ix) You shall at all times, be subjected to the Constitution of the University of Malaya, Statutes, Acts and Regulations in force in the University of Malaya. Amendments and Adaptations to these regulations and practices may, from time to time, be made by the Council of the University of Malaya."

The University Council in a policy decision passed a resolution requiring all officers in Groups A and B (appellant is in Group A) who are still on probation on or after January 1, 1978 to pass the Peperiksaan Am Kerajaan in addition to any other examination as a prerequisite for confirmation in their posts. The resolution is contained in Service Circular UM No. 2/1978 ('Service Circular') dated October 9, 1978.

The respondent's letter of offer did not stipulate the prescribed examinations which the appellant had to pass to be eligible for confirmation. It certainly did not contain the requirement of passing the Peperiksaan Am Kerajaan.

Without going into unnecessary detail the appellant filed a writ on February 27, 1982 seeking a declaration and an injunction to restrain the University from implementing the Service Circular on the ground that it is invalid and conflicts with the terms and conditions of his contract of employment and is also in violation of section 45(3)(b) of the Constitution of the University.

It is the contention of the appellant before us as well in the High Court that the Service Circular which imposed a new condition of service requiring the appellant to sit for the Peperiksaan Am Kerajaan was invalid as it amounted to a unilateral variation of his contract of employment. It is said that on the authority of *Cowey* v. *Liberian Operations, Limited*[1] the University could not impose a new condition of service unless it terminates the existing employment and then enters into another contract of employment providing for the new condition, or, alternatively, the appellant had agreed formally to a variation of the existing contract of employment, neither of which applied in this case. In that case the common law requirement of giving 3 months' notice to terminate a

contract of employment was unilaterally substituted with a month's notice and it was held to be invalid. (See also *Chitty* on Contracts, 24th ed. Vol. 1, para. 1376).

The issue therefore is whether there was a variation.

The learned judge held that the Service Circular did not impose an additional condition outside the terms of the contract of employment and therefore did not constitute a unilateral variation. He was of the view that by virtue of condition (ii) of the letter of offer it was within the power of the Council to prescribe from time to time examinations to be passed. He also held that the Service Circular was not *ultra vires* section 45(3)(b) of the Constitution of the University. Since there were no Statutes, Acts or Regulations in force on the date of appointment of the appellant, there was no restriction whatsoever in the power of the Council to issue the Service Circular.

In our view, the appeal turns, in part, on a consideration of the provisions of the Constitution of the University.

The powers of the University are contained in section 4 of its Constitution. Paragraph (b) of subsection (1) thereof gives power to the University to regulate the conditions of service of its staff, including schemes of service, salary scales, leave and disputes. Section 16 provides that the executive body of the University shall be the Council and the Council may exercise all the powers conferred on the University as contained in section 4. Section 25 provides for the making of statutes dealing with the methods of appointment and the conditions of service of officers and teachers. Section 45 deals with the provisions relating to the appointments of teachers and employees. As the crux of the case turns on the construction of section 45(3)(b) we set it out in full:

> "45. (3) Every person employed by the University shall hold office on such terms and conditions as may be prescribed by the Council and the terms and conditions to be so prescribed shall be deemed to include a provision:
>
> (b) in relation to all other terms and conditions of service that his employment is subject to the provisions of this Constitution and to the provisions of all Statutes, Acts and Regulations in force on the date of the commencement of his employment.

A number of statutes have been made by the Council in the exercise of the powers conferred by section 4(1) for example Statute X (New Series) relating to the Appointment of Salary Group A Employees, but none has been made in respect of the matter referred to in paragraph (n) of section 4(1) in regard to conditions of service relating to "prescribed examinations" expressed in condition (ii) of the letter of offer.

In the absence of provisions relating to what are the "prescribed examinations" it was argued that condition (ii) is not free from ambiguity and as such the learned judge erred when he failed to apply the *contra proferentem* rule against the University (see *John Lee & Son (Grantham) Ltd.* v. *Railway Executive*[2]; *Kong Ming Bank Bhd.* v. *Leong Ho Yuen*[3]; *Halsbury's* Laws 4th ed. Vol. 12 para. 1473). On behalf of the University it was argued that the phrase passing the "prescribed examinations" is not in itself ambiguous because in the absence as to what the "prescribed examinations" are in the contract, reference is to be made to the Constitution of the University and in particular, section 45(3)(b) of the Constitution which sets out the appropriate prescribing authority. It would mean that examinations will be prescribed by the Council.

We are satisfied that the respondent's contention is correct. The phrase "prescribed examinations" does not introduce uncertainty into the contract.

Therefore, the answer to these opposing contentions must depend on a consideration of the Constitution of the University. The power exercised by the Council, as the executive authority of the University, in appointing the appellant, was that conferred on it by section 45(3)(b). It consists of two limbs. First, the appointment of the appellant was made subject to "such terms and conditions *as may be prescribed*" (emphasis added) by the Council. Secondly, such terms and conditions to be so prescribed *shall be deemed* (emphasis supplied) to include a provision that the appellant's employment is subject to the provisions of the Constitution, Statutes, Acts and Regulations in force on the date of the appointment. With regard to the second limb of the provision, it is common ground that no Statute, Act or Regulation has been made by the Council pursuant to section 4(1)(n) of the Constitution defining or regulating "prescribed examinations" for the purposes of the conditions of service. There is accordingly still left for consideration the first limb of that provision which expressly provides for "such terms and conditions as may be prescribed

by the Council". A consideration of the statutory provision clearly emphasizes its potentially broad scope in its application where "prescribed examinations" (in plural, it will be noted,) are otherwise undefined. It should, in our view, consistent with its language, be given a broad as opposed to a narrow construction and one which will serve to achieve the broad objects and purposes Parliament intended.

When the Council resolved to issue the Service Circular, the question before it, in our opinion, went far beyond the circumstances of the appellant, and involved as well the exercise of the powers conferred on it under the Constitution of the University as its governing authority. The argument that in issuing the Service Circular the Council was merely acting under (but beyond) the conditions of the appellant's contract of employment and not under its basic statute as well cannot be supported. The Service Circular was not tailored only for the appellant, but applied to all staff in Groups A and B. In our opinion the decision was inescapably one which was made in exercise of the powers conferred by the Constitution of the University even if the occasion for its exercise arose as a result of a contractual arrangement.

We therefore hold that the Service Circular was valid and did not amount to a unilateral variation of the appellant's contract of employment.

The argument that the Council's resolution containing a new condition of employment relating to the requirement to pass the Peperiksaan Am Kerajaan must only be implemented by Statute, Act or Regulation and not by a Service Circular is in our opinion to confuse form with substance. We see no reason in principle why the Council could not implement its resolution by way of a Service Circular.

The appeal is accordingly dismissed with costs. We direct the deposit lodged as security to be paid out to the respondent to account of its costs.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Shook Lin & Bok.*

THANGAVELU ARUMUGAM & ORS. v. LEMBAGA PELABUHAN KELANG

[F.C. (Raja Azlan Shah L.P., Salleh Abas F.J. and Abdoolcader J.) December 8, 1982, January 8, 1983]

[Kuala Lumpur – Federal Court Civil Appeal No. 239 of 1982]

Contract – Contract of employment – Service with statutory authority – Employees of Malayan Railway Administration transferred to the respondent authority – Employees exercising option to revert to services of Railway Administration – Seconded to serve respondent for five years – Employees offered permanent employment with respondent at end of secondment – Offers accepted by employees – Conversion to Harun scale of salary – Whether employees entitled to conversion to Suffian scale before conversion to Harun scale – Port Authorities Act, 1963, s. 52.

Employment – Contract of employment – Service with statutory authority – Whether employees entitled to conversion to Suffian scale before conversion to Harun scale.

In this case the appellants were originally employees of the Malayan Railway Administration and therefore members of the public service of the Federation. On the establishment of the Lembaga Pelabohan Kelang the appellants were transferred by the Minister of Transport to serve the respondent in accordance with subsection (1) of section 52 of the Port Authorities Act, 1963. On 31.3.1966 the appellants exercised their option under subsection (2) of section 52 of the Act to revert to the services of the Railway Administration. Because there were no vacancies for them in the services of the Railway Administration, the appellants continued to work for the respondent but on secondment basis. Under subsection (3) of section 52 of the Act the appellant's eligibility to serve the respondent on secondment basis was only to last for five years. The respondent before the end of that period on 25.12.1971 offered them permanent employment as clerks in its services. The appellants accepted the offers on 31.12.1971. The salaries offered and accepted were those based on the *Benham Salary Schemes.* The *Benham Scale* was replaced as regards civil servants by the *Suffian Salary Scheme* on 1.10.70 with retrospective effect to 1.1.1970 but the *Suffian Scale* was not applied to employees of statutory bodies. The employees of statutory bodies received their revision of salaries under the *Harun Salary Scheme* on 15.1.1975, with retrospective effect to 1.1.1970. As a result of the implementation of the *Harun Salary Scheme* the respondent converted the appellant's salaries direct from the *Benham Scheme* to the *Harun Scheme.* The appellants objected to this method and contended that their salaries should first be converted to the *Suffian Scheme* and then to the *Harun Scheme.* The respondents refused to do so and the appellants took out a writ claiming arrears of salaries and ancillary remedies on the ground that the failure of the respondent to convert their salaries to the *Suffian Scheme* before applying the *Harun Scheme* to their salaries constituted a breach of the contract of employment. The suit was dismissed in the High Court and the appellants appealed.